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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1286

I. H. SPEARS,

Appellant,

vs.

EVA MAE SPEARS

APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

MOTION TO AFFIRM AND STATEMENT OPPOSING JURISDICTION

Eva Mae Spears,
Appellee, pro se.

George A. Sutton,
Counsel for Appellee.

INDEX

Subject Index

	Page
Motion to affirm	1
Exhibit "A"—Order of Supreme Court of Michigan dismissing appeal	15
Exhibit "B"—Order of District Court of United States for the Northern District of Florida dismissing cause of *Spears* v. *Spears*	16
Exhibit "C"—Order of District Court of the United States for the Northern District of Florida dismissing cause of *Tunsell* v. *Spears*	17
Exhibit "D"—Summons issued by District Court of the United States for the Eastern District of Michigan in case of *Spears* v. *Spears*	18
Exhibit "E"—Notice of appeal to Circuit Court of Appeals in case of *Spears* v. *Spears*	19
Exhibit "F"—Summons issued by District Court of the United States for the Eastern District of Michigan in case of *Spears* v. *Spears*	20
Exhibit "G"—Summons issued by District Court of the United States for the Eastern District of Michigan in case of *Spears* v. *Spears*. Citations of authorities supporting motion to affirm	21

Table of Cases Cited

Crowell v. *Randall*, 35 U. S. 368, 9 L. Ed. 458	24
Eustis v. *Bolles*, 150 U. S. 361	24
Murdock v. *Memphis*, 87 U. S. 590	24
People v. *Spears*, 59 Fla. 44, 51 So. 815	8

Statutes Cited

Michigan Statutes, Annotated:	
Section 27.87	4, 5, 24
Section 27.88	4, 5, 24
Section 27.92	4, 5, 24
Orlinger's Federal Practice, Vol. I, page 837	25

IN THE SUPREME COURT OF THE STATE OF MICHIGAN

No. 43623½

EVA MAE SPEARS

Plaintiff & Appellee,

vs.

COMMUNITY NATIONAL BANK OF PONTIAC, MICHIGAN; WILLIAM TALMADGE SPEARS, BETTY TUNSELL, KING DAVID AND LEON H. HUBBARD, SUCCESSOR SPECIAL ADMINISTRATOR, ETC.,

Defendants & Appellants

MOTION BY PLAINTIFF & APPELLEE TO AFFIRM DECISION

Now comes Eva Mae Spears, Plaintiff and Appellee herein, and moves the Honorable Supreme Court of the United States to affirm the decisions of the Michigan Supreme Court appealed from herein by I. H. Spears as alleged "assignee' of William Talmadge Spears, Betty Tunsell and King David, for the following reasons:

I

That said appeal was taken for the purpose of delay only and that the questions upon which the decision of the Cause depends are so unsubstantial as not to need further argument.

II

That the appeal herein is not taken by the defendants and appellants in the Cause, but by one I. H. Spears (attor-

ney for appellants) in his own right as "assignee" of said defendants and appellants, whereas the Record fails to disclose any assignments to him which would justify a substitution of parties; that the only "assignments" relied upon, are a "Pooling Agreement" dated March 30, 1946, and a subsequent assignment by William Talmadge Spears, dated October 30, 1946—copies of which are annexed to I. H. Spears' Petition to the Michigan Supreme Court for "Substitution of Appellants and for Further Time to Complete Record on Appeal"—and those documents do not constitute assignments of interests, but are mere employment agreements giving I. H. Spears power to act as his clients' agent and attorney, as appears from the following wording taken from the said "Pooling Agreement," to-wit:

> ". . . in order that *our* said attorney may the more efficiently and easily handle said estate; and in order that he may push said claims to a success and *deliver to each person interested his* just and proportionate *share* thereof . . . we do by these presents, grant unto *our said attorney* full authority and power, to do and perform every act in relation to said estate, and in *our interest therein* as may be necessary in bringing to final determination and settlement of said estate *in our behalf.*"

and as further appears from the following wording taken from the alleged assignment from William Talmadge Spears, to-wit:

> "Know all men by these presents, that I, William Talmadge Spears, heir at law of Dr. Mansfield L. Spears, deceased, late of Pontiac, Michigan, for and in consideration of the agreement contained in separate contracts heretofore entered into between I. H. Spears and William Talmadge Spears, and the "Pooling Agreement" entered into between the brothers and sisters of Dr. Spears and joined in by I. H. Spears for the more speedier consummation of the various suits

pending in the State and Federal Courts, in respect to the same, I, William Talmadge Spears, do by these presents transfer, assign and convey, etc.—."

That since said alleged assignments were dated in *March 1946* and *October 1946*, respectively, and were not presented to the Michigan Supreme Court by I. H. Spears as a basis for attempting to have himself substituted as defendant and appellant until a few days after that Court had made and entered its Order of December 2, 1946, denying I. H. Spears' Petition for Leave to Appeal from the Order of the Oakland County Circuit Court revoking his license to practice law in Michigan, it is apparent that his attempt to be substituted is not in good faith but is made for the purpose of circumventing the Court Order denying him the right to practice law in Michigan, and that a different ruling by the Michigan Supreme Court would have aided I. H. Spears to perpetrate a fraud upon the courts.

III

That although there are five (5) "Assignments of Error," yet when boiled down to brief wording, they together say but one thing, namely: That the refusal of the Michigan Supreme Court to grant I. H. Spears' petition to be substituted as defendant and appellant and to grant him an additional extension of time to complete the record on appeal, amounted to a taking away of his property without due process of law and also denied him equal protection of the laws. However, neither the "Assignments of Error" nor the accompanying "Jurisdictional Statement" disclose how or in what manner the decisions appealed from were discriminatory, or how they took from him *any* property, either with or without due process of law. Since the alleged "Assignments" upon which he relies are, in fact, mere agreements appointing him an agent, it cannot be logically

said that the refusal of the Michigan Supreme Court to substitute I. H. Spears (the agent) as a party in place of the principal, violates those sections of the Constitution referred to.

IV

That, as will appear from Appellee's statement of matters opposing jurisdiction of the United States Supreme Court, hereto attached, this appeal was taken for the purpose of annoying the plaintiff and appellee, Eva Mae Spears, and for the purpose of coercing her into paying I. H. Spears a large sum of money upon fictitious claims.

V

Because it is apparent from all of the facts and Records in this Cause, that the defendants and appellants had failed to comply with the Court Rules and Orders in preparing their Record on Appeal to the Michigan Supreme Court, and therefor and thereby lost all right to additional time within which to perfect said appeal; that I. H. Spears' attempt to be substituted as the defendant and appellant herein was nothing more nor less than a flagrant attempt to circumvent the Court's Order terminating his license to practice law in Michigan; that because of the plain facts and circumstances before that Court it was not necessary for it to rely upon Michigan Statutes, M.S.A. 27.87, 27.88 and 27.92 to find reason and justification in refusing to substitute him as defendant and appellant, in place of his clients; that the constitutionality and validity of the Michigan Statutes referred to by appellant herein, was not *necessarily* passed upon by the Michigan Supreme Court in this Cause, and that there is a fair presumption that they were not even taken into consideration in reaching its decision herein appealed from.

VI

Because the Michigan Supreme Court Order from which this appeal is taken, consists of two distinct parts, that is to say: it denies I. H. Spears' right to be substituted as party defendant and appellant, and it also denies appellants' right to an extension of time to complete Record on Appeal; and since the Michigan Supreme Court's determination and decision to deny further time to complete said Record on Appeal—and its subsequent Order of March 4, 1947, dismissing the appeal for failure to timely complete the Record, are discretionary orders, solely within the province of that Court and are not reviewable by the United States Supreme Court; wherefor the validity and constitutionality of the Michigan Statutes (M. S. A. 27.87, 27.88 and 27.92) referred to by appellant is unimportant.

VII

Because the Michigan Supreme Court Order denying the defendants and appellants further time to complete the Record on appeal to that Court, was a discretionary question solely within the province of that Court, and its decision thereon did not divest the defendants and appellants or I. H. Spears as alleged assignee, of any property without due process of law, and is not reviewable by the United States Supreme Court. Such being the case, I. H. Spears would have no further right to proceed with the appeal from the Oakland County (Michigan) Circuit Court in Chancery to the Michigan Supreme Court, regardless of whether or not this Honorable Court should declare Michigan Statutes referred to (M. S. A. 27.87; 27.88 and 27.92), constitutional or unconstitutional; that therefore the constitutional question raised by this appeal is "moot" and of no consequence in the case.

VIII

This Plaintiff and Appellee does therefore very respectfully request this Honorable Court to either affirm the decisions and rulings of the Michigan Supreme Court, herein appealed from, or dismiss said Appeal, in the sound discretion of this Court.

This Motion is presented under the provisions of United States Supreme Court Rules 7, Sec. 4; and 12, Sec. 3.

Very respectfully submitted,

EVA MAE SPEARS,
Plaintiff and Appellee.

GEORGE A. SUTTON,
Attorney for Eva Mae Spears,
604 Community Bank Building,
Pontiac, Michigan.

IN THE SUPREME COURT OF THE STATE OF MICHIGAN

No. 43623½

EVA MAE SPEARS,
Plaintiff and Appellee,

vs.

COMMUNITY NATIONAL BANK OF PONTIAC, MICHIGAN; WILLIAM TALMADGE SPEARS, BETTY TUNSELL, KING DAVID AND LEON H. HUBBARD, SUCCESSOR SPECIAL ADMINISTRATOR,
Defendants and Appellants

APPELLEES STATEMENT OF MATTERS OPPOSING JURISDICTION OF THE UNITED STATES SUPREME COURT.

Eva Mae Spears is the widow of Mansfield L. Spears, who died testate September 16, 1945. At the time of his death they had in a joint savings account in Community National Bank of Pontiac, Michigan $18,196.00 which represented their joint accumulation over twenty-four (24) years. Because certain heirs of deceased (represented by I. H. Spears) undertook to claim said savings account as a part of the assets of deceased's estate, the widow commenced this Action in the Oakland County Circuit Court of Michigan in Chancery, for the purpose of establishing the fact that the account had been "Joint" with the right of survivorship, and became her sole property upon her hus-

band's death. The Trial Judge so found and Decreed on May 6, 1946.

An appeal to the Michigan Supreme Court was taken by defendants and appellants and a transcript of the testimony ordered of the Circuit Court Stenographer. This transcript of the testimony was completed by the Stenographer on October 29, 1946. (See Court's Statement in Order dated November 29, 1946 and made a part of appellee's Answer to appellant's Petition for Extension of Time).

In October 1946, members of the Oakland County, Mich., Bar Association learned that Isiah H. Spears had been a resident of California for the last fifteen years, and had never been granted a license to practice law in that State and that he had wrongfully obtained from one of the Circuit Judges of Oakland County, Michigan, an Order dated October 31, 1945 authorizing him to appear as attorney for heirs of Mansfield L. Spears, deceased, in this Cause. But that in order to obtain such an Order, he had filed a sworn petition setting up in effect that he was a licensed attorney of the State of Florida, but which made no mention of the fact that his license to practice in Florida had been granted in 1908, and that in 1909 or 1910 he had been informed against for forgery, etc. and tried by a County Criminal Court and convicted by a jury, and that on appeal to the Florida Supreme Court he was granted a new trial for the reason that the Prosecutor had failed to elect upon which of the three charges in the Information he relied for conviction. (See *People* vs. *Spears*, 59 Fla. 44, 51 So. 815); nor did his Petition show that he had thereupon left the State of Florida in 1911 and had not resided there since that time; his said Petition also failed to show that on December 31, 1912 he had been granted a license by the County Court of Jackson County, Missouri, to practice law in Missouri, upon a Petition filed by him for that purpose, and that his license to practice in that State had also been

permanently revoked by Order of the Supreme Court of Missouri on March 28, 1913.

Upon learning these facts, the Oakland County, Michigan Bar Association, through its appropriate officers and committees, filed a Petition in the Circuit Court of said County and State to have the Order authorizing I. H. Spears' License to practice law in Michigan revoked. Upon a hearing had in Open Court, before the three County Judges, the following Order was made and entered, to-wit:

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

No. 28477

In the Matter of the Petition for Revocation of License of Isiah H. Spears to Practice Law in the Circuit Court for the County of Oakland.

At a Session of the Circuit Court for the County of Oakland held at the Court House in the City of Pontiac, on the 28th day of October, 1946.

Present: Honorable George B. Hartrick, Honorable Frank D. Doty, Honorable H. Russell Holland, Circuit Judges.

The Petition for revocation of license of Isiah H. Spears to practice law in the Circuit Court for the County of Oakland, having been brought on for hearing after due proof of personal service of an Order to Show Cause why such license should not be revoked, upon the said Isiah H. Spears; and the matters in issue being duly argued in open court and it appearing unto the Court that the Order of October 31, 1945, permitting the said Isiah H. Spears to practice before the Circuit Court for the County of Oakland in the matter of the Estate of Dr. Mansfield L. Spears (Will Contest) No. Law 27,987, was obtained through fraud and misrepresentation on the part of said Isiah H. Spears in presenting his Petition therefor to this Court, and that said Order should therefore be revoked.

Therefore it is ordered that the Order issued October 31, 1945, permitting the said Isiah H. Spears to practice before the Circuit Court for the County of Oakland in the matters of the Estate of Dr. Mansfield L. Spears (Will Contest) No. Law 27,987 is hereby revoked, vacated and held for naught.

It is further ordered that all privilege and license relative to the practice of law in the Courts in the County of Oakland, and State of Michigan, by the said Isiah H. Spears in any manner arising out of or resulting from the entry of said Order of October 31, 1945, is hereby revoked.

It is further ordered that the Clerk of this Court forthwith strike from the Roster of Practicing Attorneys in the County of Oakland, State of Michigan, the name of Isiah H. Spears as subscribed on page 101 of said Roster, pursuant herewith.

It is further ordered that a certified copy of this Order be served by registered mail upon the said Isiah H. Spears at his last known address.

FRANK L. DOTY,
GEORGE B. HARTRICK,
H. RUSSELL HOLLAND,
Circuit Judges.

That thereupon Isiah H. Spears petitioned the Michigan Supreme Court for leave to appeal from said Order, which leave was denied by said Supreme Court by the following Order made December 2, 1946, to-wit:

At a Session of the Supreme Court of the State of Michigan held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the second day of December, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Henry M. Butzel, Chief Justice, Leland W. Carr, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, Associate Justices.

43616½

In the Matter of ISIAH H. SPEARS

In this cause an application is filed by appellant Isiah H. Spears for leave to appeal from an order of the Circuit

Court for the County of Oakland, entered October 28, 1946, and a breif in opposition thereto having been filed by appellee and due consideration thereof having been had by the Court, it is ordered that the application be and the same is hereby Denied.

(The Order referred to was entered in the Circuit Court for the County of Oakland cancelling and revoking an order of that Court permitting appellant to practice in that Court in the Matter of the Estate of Mansfield L. Spears, deceased).

Seal of
Michigan Supreme
Court

Being no longer authorized to practice law in Michigan or to represent his clients in the Courts there, I. H. Spears, promptly, and on or about December 3, 1946, filed his Petition setting up that his clients had all assigned all of their rights and claims to him, and asked that Court to substitute himself as defendant and appellant, as appears by reference to his "Petition and affidavit for Extension of Time, etc." And his Petition for Re-hearing of his application for Substitution, etc., designated as items 1 and 4 of Defendant and Appellants "Praecipe for Parts of Record" in this appeal.

Plaintiff and Appellee's *answer* to defendant's and appellant's "Petition for an extension of time to perfect the appeal and to be substituted as the party defendant and appellant, alleges two reasons why such extension of further time should be denied and also alleges two specific reasons why the substitution of I. H. Spears should be denied, namely:

(First reason) That the alleged assignments upon which I. H. Spears bases his right to be substituted as defendant-appellant herein, are not assignments at all, but are mere powers of attorney appointing him their agent for the purpose of making settlements, etc.

(Second reason) That Michigan Statutes M. S. A. 27.87; 27.88 and 27.92 prohibit assignments of claims to attorneys for the purpose of bringing suits thereon.

The Record in this Cause does not disclose that the Michigan Supreme Court was obliged to, or did, take into consideration the validity or constitutionality of M. S. A. 27.87; 27.88 or 27.92 in reaching the decision appealed from in this Cause.

As to the appeal from the Order of the Michigan Supreme Court denying extension of time to perfect appeal, no ground for jurisdiction of the United States Supreme Court, as to this point, is contained in defendant and appellant's "Jurisdictional Statement." The constitutionality of the Michigan Statutes referred to has no connection with *this* alleged ground for appeal, and the appeal should be dismissed as to this ground.

The Decree of the lower (Oakland County, Michigan) Court was rendered May 6, 1946 and the Testimony transcript was completed by that Court Stenographer *October 29, 1946*, and the unusual and unreasonable delay of defendants and appellants in completing the Record on appeal to the Michigan Supreme Court amply justified the said Supreme Court's Order of December 17, 1946, denying another extension of time within which to complete said Record on Appeal and also justified its Order of March 4, 1947, dismissing said appeal. Such a discretionary question was one exclusively for the Michigan Supreme Court to decide, and its decision thereon cannot be reviewed by this Court.

Since the appeal to the Michigan Supreme Court was dismissed by that Court because of appellant's failure to complete the Record on appeal within the time prescribed by that Court, the question of the constitutionality of the Michigan Statutes referred to by defendant and appellant's "Jurisdictional Statement" is of no consequence. It could avail defendant and appellant nothing for this Court to render a decision holding the Michigan Statutes M. S. A. 27.87; 27.88; 27.92 unconstitutional, if, at the same time, this Court cannot set aside the Michigan Supreme Court Order of December 17, 1946 denying an extension of time within which to complete the record on appeal to that Court. All of the facts and circumstances here related were known to and were taken into consideration by the Supreme Court of Michigan in denying appellant's Motion for an exten-

sion of time as well as his Petition to be substituted as party defendant and appellant, and should therefore be known and considered by this Honorable Court.

It is the further contention of Plaintiff and Appellee that this appeal is frivolous and was taken by I. H. Spears for the main purpose of coercing her into paying him a large sum of money in settlement of his fictitious claims; that she is justified in this belief from her previous experiences with him; that upon her refusal to pay him $10,000.00 in settlement, he has commenced the following court actions against her since her husband's death September 16, 1945, to-wit:

1. Entered Contest in this Action.

2. Contested Will of Dr. Mansfield L. Spears in County Probate Court.

3. Appealed Will Contest through Oakland County Circuit Court.

4. Appealed Will Contest to Michigan Supreme Court and then failed to complete Record on Appeal. (See annexed Michigan Supreme Court Order Ex. "A" dismissing Appeal.)

5. Commenced Civil Action No. 237 in United States District Court, Pensacola, Florida. (See Order May 3, 1946 dismissing Cause, Exhibit "B".)

6. Commenced another Action No. 239 in United States District Court, Pensacola, Florida. (See Order Exhibit "C" dismissing Cause.)

7. Commenced Civil Action No. 5756 in United States District Court, Detroit, Michigan, (as appears from photostatic copy of summons, hereto attached as Exhibit "D").

8. Appealed from Order of District Judge Honorable Ernest A. O'Brien, dismissing Cause, to United States Circuit Court of Appeals for the Sixth Circuit—where said appeal is still pending and is noticed for hearing on Motion to Dismiss April 7, 1947. (See copy of Notice of Appeal hereto attached as Exhibit "E".)

9. Commenced another Civil Action (No. 6056) United States District Court, Detroit, Michigan, which Cause is

now awaiting decision by Honorable Judge Picard, on Motion to Dismiss.

10. June 7, 1946 commenced Civil Action File No. 5780 in United States District Court at Detroit, Michigan. (See copy of summons attached as Exhibit "F".)

11. January 22, 1947 commenced Civil Action File No. 6322 in United States District Court, Detroit. (See copy of summons hereto annexed as Exhibit "G".)

Respectfully submitted,

EVA MAE SPEARS,
Plaintiff & Appellee,
% George A. Sutton,
604 Community Bank Bldg.,
Pontiac, Michigan.

EXHIBIT "A"

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the fourth day of March, in the year of our Lord one thousand nine hundred and forty-seven.

Present the Honorable Leland W. Carr, Chief Justice; Henry M. Butzel, George E. Bushnell, Edward M. Sharpe, Emerson R. Boyles, Neil E. Reid, Walter H. North, John R. Dethmers, Associate Justices.

43566

IN THE MATTER OF THE ESTATE OF MANSFIELD L. SPEARS, deceased; EVA MAE SPEARS, *Proponent,*

vs.

WILLIAM TALMADGE SPEARS, et al., *Contestants and Appellants.*

In this cause a motion is filed by proponent to dismiss the appeal heretofore taken herein by contestants from the judgment of the Circuit Court for the County of Oakland, and a brief in opposition thereto having been filed by I. H. Spears, and due consideration thereof having been had by the Court, It is ordered that the appeal taken herein as aforesaid be and the same is hereby dismissed.

STATE OF MICHIGAN, ss:

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 5th day of March, in the year of our Lord one thousand nine hundred and forty-seven.

JAY MERTZ,
Clerk.

EXHIBIT "B"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA—PENSACOLA DIVISION.

No. 237

WILLIAM TALMADGE SPEARS, *Complainant-Plaintiff*,

vs.

EVA MAE SPEARS, COMMUNITY NATIONAL BANK OF PONTIAC, MICHIGAN, a Michigan banking corporation, AND LEON H. HUBBARD, Successor Special Administrator of the Estate of Dr. Mansfield L. Spears, deceased, *Respondents-Defendants.*

The Court having examined the complaint (designated "Complaint in Equity") filed herein April 29, 1946, and it appearing therefrom that all of the defendants are citizens and residents of the State of Michigan, and that the subject matter is an estate in process of domiciliary administration in the State of Michigan, where all of the personal property, funds and the bulk of the real estate is situate, the only other real estate being Florida real estate comprising approximately five per cent of the value of the estate, and which Florida real estate is, by Florida probate law, subject to proper ancillary administration in the proper probate court.

This Court is of the opinion that it is without jurisdiction to entertain this cause, and it is therefore

Ordered and Adjudged that the same be dismissed.

Done and Ordered at Pensacola, Florida, this 13 day of May, A. D. 1946.

AUGUSTINE V. LONG,
United States District Judge.

Certified, a true copy.
WM. LOGAN HILL,
Clerk,
By MARION HOWE,
Deputy Clerk.

EXHIBIT "C"

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF FLORIDA—PENSACOLA DIVISION.

Civil Action No. 239

BETTIE TUNSELL, *Complainant*,

vs.

EVA MAE SPEARS, Individually and as Special Administratrix; AETNA CASUALTY AND SURETY COMPANY, of Hartford, Conn., LEON H. HUBBARD, as Successor Special Administrator, and COMMUNITY NATIONAL BANK OF PONTIAC, MICHIGAN, a Michigan banking corporation, *Defendants*.

The Court having examined the complaint (designated "Bill of Complaint") filed herein May 8, 1946, and the Court being of the opinion that it is without jurisdiction to entertain this cause, it is

Ordered and Adjudged that said cause be and the same is dismissed.

Done and Ordered at Pensacola, Florida this 13th day of May A. D. 1946.

AUGUSTINE V. LONG,
United States Judge.

Certified, a true copy.
WM. LOGAN HILL,
Clerk,
By MARION HOWE,
Deputy Clerk.

EXHIBIT "D"

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Civil Action File No. 5756

WILLIAM TALMADGE SPEARS, BETTIE TUNSELL, I. H. SPEARS,

Plaintiffs,

vs.

EVA MAE SPEARS, Individually and EVA MAE SPEARS as Special Administratrix of the Estate of Dr. Mansfield L. Spears, Deceased. Aetna Casualty and Surety of Hartford, Conn. Leon H. Hubbard as Successor Special Administrator of the Estate of Dr. Mansfield L. Spears, Deceased, Community National Bank of Pontiac, Michigan, a Michigan Corporation, *Defendants*

SUMMONS

To the above named Defendant:

You are hereby summoned and required to serve upon I. H. Spears, plaintiff's attorney, whose address is 303 Lawyers Building, 645 Randolph Street, Detroit 26, Michigan, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

GEORGE M. READ,
Clerk of Court,

By —— ——,
Deputy Clerk.

[SEAL OF COURT.]

Date: May 25th, 1946.

NOTE.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

EXHIBIT "E"

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

Civil Action File No. 5756

WILLIAM TALMADGE SPEARS, et als., *Plaintiffs,*

vs.

EVA MAE SPEARS, et als., *Defendants*

Notice of Appeal to Circuit Court of Appeals for Michigan under Rule 73 (b)

Notice is hereby given that William Talmadge Spears, Bettie Tunsell, and I. H. Spears, plaintiffs in above styled cause, hereby appeal to the Circuit Court of Appeals for the Sixth Circuit from the final judgment entered in this action on June 28th, 1946.

Dated July 1st, 1946.

I. H. SPEARS,
Attorney for Appellants;
WILLIAM TALMADGE SPEARS,
BETTIE TUNSELL, and
I. H. SPEARS,
Address: 73 W. Bellevue Dr.,
Pasadena 2, California,
280 Rapid St., Pontiac 19, Michigan.

EXHIBIT "F"

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

Civil Action File No. 5780

I. H. Spears, *Plaintiff*,

v.

Eva Mae Spears, 68 Murray Street, Pontiac, Michigan, *Defendant*

Summons

To the above named Defendant:

You are hereby summoned and required to serve upon Isaiah H. Spears, plaintiff's attorney, whose address 280 Rapid St., Pontiac, Michigan, an answer to the complaint which is herewith served upon you within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

George M. Read,
Clerk of Court.

[seal of court.]

——— ———,
Deputy Clerk.

Date: June 7th, 1946.

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

EXHIBIT "G"

DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION.

Civil Action File No. 6322

I. H. Spears, *Plaintiff*,

v.

Eva Mae Spears and George A. Sutton, *Defendants*

Summons

To the above named Defendant:

You are hereby summoned and required to serve upon I. H. Spears, plaintiff's attorney, whose address 73 W. Bellevue Dr., Pasadena 2, California or 280 Rapid Street, Pontiac 19, Michigan, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Albert L. Allred,
Clerk of Court,
By James E. Lane,
Clerk of Court.

[seal of court.]

Date: January 22, 1947.

IN THE SUPREME COURT OF THE STATE OF MICHIGAN

No. 43,623½

EVA MAE SPEARS,

Plaintiff-Appellee,

vs.

COMMUNITY NATIONAL BANK OF PONTIAC, MICHIGAN, WILLIAM TALMADGE SPEARS, ET AL. (I. H. SPEARS, Assignee),

Defendants & Appellants

CITATION OF AUTHORITIES SUPPORTING MOTION TO AFFIRM

In this Cause, I. H. Spears, who has been acting as attorney for defendants and appellants in the lower courts, was disbarred from further practice in the Michigan courts after he had appealed this Cause to the Michigan Supreme Court. Thereupon he obtained and filed with the Michigan Supreme Court, documents from his clients (defendants and appellants) purporting to be assignments of their rights and interests in the litigation, and filed also a motion therein to be substituted as party defendant and appellant in place of his clients.

Plaintiff and appellee contested I. H. Spears' above mentioned Motion, on the grounds that the alleged "assignments" were powers of attorney, only, and were not assignments of interest; also that they were filed as part of a scheme by I. H. Spears to circumvent and avoid the effect of

the court order cancelling his right to practice law in Michigan; also that the said "assignments" violated the provisions of Michigan Statutes (M.S.A. 27.87, 27.88 and 27.92) making it unlawful for attorneys to purchase claims for the purpose of suing upon them.

Questions:

The questions raised by this appeal are:

> First: Was a decision of the Federal question necessarily made the ground of the Judgment rendered by the Michigan Supreme Court in denying Mr. Spears' Motion to be substituted, and for an extension of time to perfect appeal?

Plaintiff and Appellee's answer to this question is *No.*

> Second: Was the appeal frivolous and the question raised an unsubstantial one?

Plaintiff and Appellee's answer to this question is *Yes.*

Authorities:

In *Crowell* v. *Randall,* 35 U. S. 368, 9 L. Ed. 458, this Court laid down certain rules governing the exercise of jurisdiction in which it held that the Federal question raised must have been a substantial one. Later, in *Murdock* v. *Memphis* (1887) 87 U. S. (20 Wall.) 590, the Court held that the decision of a state court on a Federal question would be inquired into as to two matters only, namely: First, whether or not the state court's decision of the Federal question was correct (in which case it would affirm); if its decision was not correct then it would determine whether or not any other matter adjudged by the state court was sufficient to sustain the state court's judgment or decision. *If so, the Court would affirm the judgment without inquiring into the correctness of the decision as to the non-federal issue.*

This Rule was again broadened by the decision in *Eustis* v. *Bolles* (1893), 150 U. S. 361, and this Honorable Court

has, since the data of that decision, uniformly held the rule to be as follows: that when the Court finds it is unnecessary to decide any Federal question, and when the state court has based its decision on a local or state question, the writ of error will be dismissed. In other words, the rule now is, as stated by Orlinger's Federal Practice, Vol. I, page 837, as follows:

> "Unless it appears that the judgment or decree of the state court cannot be rested upon the decision by that court of an independent nonfederal issue, broad enough to sustain the judgment or decree, and has fair support in the record, it will be affirmed."

To the same effect see *Moran* v. *Horsky*, 178 U. S. 205.

Conclusion:

Since an examination of the Record in this Cause will disclose that the Decision of the Michigan Supreme Court to deny I. H. Spears' Motion to be substituted, together with his Motion for an extension of time, involved questions of State Practice and were based upon independent nonfederal issues, broad enough to sustain its decision;

Plaintiff and appellee therefore respectfully submits that the Decision of the State Court should be affirmed without inquiry into the correctness of the decision of nonfederal issues.

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